

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

JAMES C. MARCELLO and	:	
OLIVIA A. MARCELLO,	:	
Plaintiffs,	:	
	:	
v.	:	CA 07-55 T
	:	
STATE OF RHODE ISLAND, et al.,	:	
Defendants.	:	

**REPORT AND RECOMMENDATION**

David L. Martin, United States Magistrate Judge

Before the Court is the Motion for Disqualification (Document ("Doc.") #7) ("Motion") filed by Plaintiffs James C. Marcello and Olivia A. Marcello ("Plaintiffs"). By the Motion, Plaintiffs seek to disqualify "any and all Defendant lawyers of the law firm Kiernan, Plunkett & Redihan ...." Motion at 1. An objection to the Motion has been filed. See Objection of the Defendants, Kiernan, Plunkett & Redihan, John A. DeSano, Bernard P. Healy, Arthur T. Marcello, Arthur T. Marcello, Jr., Thomas Marcello, Albert Mastriano and, to the Extent Named as Defendants, All Lawyers in Kiernan, Plunkett & Redihan, to Plaintiffs' Motion for Disqualification (Doc. #13) ("Objection"). The Motion has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b) (1) (B).

The memorandum filed in support of the Objection states, inter alia, that "Attorney Robert Smith is entering his appearance for these defendants and, therefore, the matter of representation is no longer an issue." Memorandum of the Defendants, Kiernan, Plunkett & Redihan, John A. DeSano, Bernard

P. Healy, Arthur T. Marcello, Arthur T. Marcello, Jr., Thomas Marcello, Albert Mastriano and, to the Extent Named as Defendants, All Lawyers in Kiernan, Plunkett & Redihan, in Support of their Objection to Plaintiffs' Motion for Disqualification ("Objecting Defendants' Mem.") at 2. In addition, Attorney Robert W. Smith has entered his appearance, see Entry of Appearance (Doc. #12), and Attorney Thomas C. Plunkett has withdrawn his appearance, see Withdrawal of Appearance (Doc. #15). Accordingly, I recommend that the Motion be denied as moot.

Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten (10) days<sup>1</sup> of its receipt. See Fed. R. Civ. P. 72(b); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ David L. Martin  
DAVID L. MARTIN  
United States Magistrate Judge  
March 30, 2007

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<sup>1</sup> The ten days do not include intermediate Saturdays, Sundays, and legal holidays. See Fed. R. Civ. P. 6(a).

